that Nasar, unlike the Applicants, had a previous criminal record, but in our view the circumstances of the present case were more serious and the Applicants can have no justification for feeling aggrieved at receiving sentences of eight years' imprisonment.

It follows that we think this was not a case where an extension of time should have been granted. The order granting an extension of time is set aside and the application for leave to appeal against sentence is dismissed.

Application dismissed.

Solicitors: *Alli Kawi & Co.; D.F. Abang Zen.*

TING SEH HING v. PUBLIC PROSECUTOR

[A.Cr.J. (Roberts C.J.) January 28 & 29, 1985]

[Kuala Belait – Criminal Appeal No. 5 of 1984]

Customs & Excise – False customs declaration – Attempting to export uncustomed goods – Vehicle used in commission of offence – Whether forfeiture mandatory – Customs Enactment No. 5 of 1954, ss. 117, 118, 124(1)(a) & 126(1)(a).

The appellant pleaded guilty to 2 charges under the Customs Enactment No. 5 of 1954, firstly with making a false customs declaration contrary to section 124(1)(a) and secondly with attempting to export uncustomed goods contrary to section 126(1)(a) of the Enactment. The Magistrate imposed fines and ordered the forfeiture of the goods and a truck used in the commission of the offence against section 126. This appeal was against the order for forfeiture of the truck.

Held: dismissing the appeal: (1) the Magistrate was correct in concluding that an offence under the Enactment had been committed and that the truck falls within the expression "the goods were used in the commission of the offence";

(2) the wording of section 118 imposes an obligation on the court to order forfeiture of the vehicle, once the conditions of section 117 are satisfied, whether or not there is an application for forfeiture by the prosecution.

Cases referred to:

(1) *Chai Min Chow & Anor.* v. *R.* [1956] S.C.R. 40.
(2) *R.* v. *Tan Long Cher* [1958] S.C.R. 60.
(3) *Re Tan Han Leong* [1959] S.C.R. 31.

CRIMINAL APPEAL.

Daljit Singh Sandhu for the appellant.

James Chiew (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Roberts C.J. : The appellant pleaded guilty to 2 charges under the Customs Enactment No. 5 of 1954 ("the Enactment"), first, with making a false customs declaration contrary to section 124(1)(a) and secondly with attempting to export uncustomed goods contrary to section 126(1)(a).

The Magistrate fined the appellant $1,000, or one month's imprisonment in default, on the 1st charge; and $600, or one month's imprisonment in default, on the 2nd charge. She also ordered the forfeiture of the various goods which were the subject of both charges and of a truck, registration number MD 420, which she found to have been used in the commission of the offence against section 126.

It is against the order for forfeiture of the truck that the appeal is brought. Section 117 of the Enactment reads as follows:

"Any order for the forfeiture or for the release of anything liable to forfeiture under the provisions of this enactment shall be made by the court before which the prosecution with regard thereto has been held. *And an order for the forfeiture of goods shall be made if* it is proved to the satisfaction of the court that an offence against this enactment or any regulation made thereunder has been committed and that the goods were the subject matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of such offence.

I have no doubt and, indeed, it was not argued to the contrary, that the magistrate was correct in concluding that an offence under the Enactment had been committed and that the vehicle falls within the phrase, "the goods were used in the commission of the offence", since clearly the lorry was being so employed when it was carrying the smuggled articles.

Counsel for the appellant has sought to persuade me that the wording of section 117 confers a discretion upon a magistrate, and that the phrase, "an order for the forfeiture of goods shall be made", is not mandatory.

I see no reason not to give to the word "shall"

in this context its ordinary meaning, which is to impose upon a court an obligation to order forfeiture, once it is satisfied that the preconditions set out in the section have been met. It was argued that to impose upon a court such an obligation can operate with great unfairness and that there must be read into the section, a duty on the court to call upon the owner and anyone else, who may have a legitimate interest in the vehicle, an opportunity to show cause why it should not be forfeited.

I do not think that such provisions can be read into the Enactment. If the legislature had intended that there should be such a procedure, provision should have been included, as it has been, by section 118 of the Enactment before an order for forfeiture can be made of goods where there has been no prosecution in relation to them.

In any event, there are three decisions of the Supreme Court of Sarawak, North Borneo and Brunei, all by judges of co-ordinate jurisdiction to my own, which find that there is no such discretion in relation to an identical section 117 of the Sarawak Customs Ordinance as it was in force at the time of these decisions. They are *Chai Min Chow & Chia Chiat* v. *R.*[1], *R.* v. *Tan Long Cher*[2] and *Re Tan Han Leong*[3].

I need do no more than say that I follow and adopt the reasoning of the judges in those cases and particularly in the third one.

I understand that, in the past, there has been some inconsistency of practice since the prosecution has sometimes applied for forfeiture of a vehicle involved in a customs offence and sometimes has not done so; and that the courts have not made an order of forfeiture unless the prosecution has asked for it.

I am afraid that the wording of the section imposes an obligation on the court to order such forfeiture, once the conditions of section 117 are satisfied, whether or not there is an application for forfeiture by the prosecution.

This was made clear in all the cases quoted above and particularly by Bodley J. in *Chai Min Chow's* case.

The consequences of this section may be severe and unfair. It means, for instance, that the owner of a valuable motorcar, who smuggles a bottle of uncustomed alcohol into the State, and is detected and convicted for doing so, will lose his motorcar as well.

No doubt some of the worse effects of this very tough provision can be avoided if customs officers are prepared to use their discretion to compound offences under section 121 of the Enactment. And there is, of course, the residuary discretion, which is vested in His Majesty in Council under section 119 of the Enactment, to order the return on such terms or conditions as he may think fit of any goods which have been forfeited under the enactment.

The appeal must be dismissed.

Appeal dismissed.

Solicitors: *Sandhu & Co.*

NILI ANAK GUMBANG & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Power J.) April 2, 1985]

[Bandar Seri Begawan – Criminal Appeals Nos. 7, 8 & 9 of 1985]

Criminal Law & Procedure – Charge – Whether strict liability offence – Immigration Enactment, 1956, s.56(b) – Penal Code, s.107.

Immigration – Illegal immigrant – Abetment – Whether strict liability – Immigration Enactment, 1956, s.56(b).

Interpretation – Statute – More than one penalty prescribed for offence.

In this case all the appellants were appealing against conviction and sentence on a charge of abetting 2 illegal immigrants to enter the state of Brunei contrary to the provisions of section 56 of the Immigration Enactment 1956 as amended by the Emergency Immigration Amendment Order 1984. Section 56(b) under which the appellants were charged states that any person who "abets any person to enter or leave Brunei in contravention of the provisions of this Enactment or of the regulations" shall be guilty of an offence. The prosecution stated that they had proceeded upon the basis that section 56(b) created an offence of strict liability. The appellants contended as a ground of appeal that they did not understand the nature of the charge and did not have it properly explained to them.

Held: (1) what concerns is not whether the charge was explained to and understood by the appellants but *what* charge was explained to them. If the offence was put to them on the basis that it was an offence of strict liability and they pleaded to it upon the basis then, if it is not such an offence *i.e.* if knowledge forms an ingredient thereof then the pleas of the appellants were not valid pleas to the charge;